

ACCESS TO PUBLIC RECORDS.

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(MR. FASCELL (at the request of M ALBERT) was granted permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. FASCELL. Mr. Speaker, everyone pays lipservice to the principle that the people must be fully informed about the activities of the Federal Government if it is to remain their servant and not become their master. But no one in this House has to be reminded how wide is the gap between professed adherence to this principle and the actual practice of Government agencies. Repeated rebuffs suffered by Members of Congress, representatives of the press, and ordinary citizens in efforts to get information which there is no legitimate ground for keeping secret have made us all aware that it is

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becoming harder and harder to find out what goes on in the Government.

For many years, executive departments cited section 161 of the Revised Statutes, 5 U.S.C. 22, as an excuse for withholding information they did not wish to reveal. This was, of course, a gross distortion of the intent of that law. It is merely a housekeeping statute, which had its origin in an act passed in George Washington's administration, authorizing the head of each department to prescribe regulations not inconsistent with law for the custody, use, and preservation of the records, papers, and property appertaining to it.

In the perhaps naive assumption that officers and employees having custody and control of Federal records would heed a clarification of the legislative intent, Congress amended this section in 1958 by adding a new sentence which explicitly stated:

This section does not authorize withholding information from the public or limiting the availability of records to the public (72 Stat. 547 (1958)).

This forced the agencies to revise the verbalisms by which they decline to furnish information, but has had no perceptible effect in increasing the availability of information to the public. The discouraging results of this law have demonstrated that a much stronger positive measure must be enacted if the dangerous trend to more and more secrecy in Government is to be halted.

To make sure that the public gets the information it is entitled to have about public business, two steps must be taken: First, Congress must affirm, by statute, the legal right of any member of the public to have access to all public records, unless they fall within carefully defined exceptions; second, a method of enforcing that right must be provided.

I am introducing a bill designed to meet both of these requirements. It would add two new subsections to section 161. Under them, every agency would be required to make all its records promptly available to any person, in accordance with published rules. I emphasize the words "any person." This gives everyone a right to examine public records without establishing any special interest in the subject matter. This is important for two reasons. The first and most significant is that every citizen has a legitimate concern in assuring himself that every agency of Government is operating fairly, efficiently, and in accordance with law, whether or not it directly impinges on his special personal interests. A second reason is that, without recognition of this universal "right to know," agencies have an excuse to delay or deny access to information by quibbling over the sufficiency of the applicant's interest in obtaining it.

There are of course, certain kinds of information which the public interest requires to be kept secret. Subsection (c) of this bill defines eight categories of information which may be withheld from the public. The only matters to which the public may be denied access are those first specifically required by

policy; second, related solely to the internal personnel rules and practices of any agency; third, specifically exempted from disclosure by statute; fourth, trade secrets and commercial or financial information obtained from the public and privileged or confidential; fifth, inter-agency and intra-agency memorandums or letters dealing solely with matters of law or policy; sixth, personnel and medical files and similar matters the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; seventh, investigatory files compiled for law enforcement purposes except to the extent available by law to a private party; and eighth, contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions.

To put teeth into this measure, any person denied access to public records is given the right to go into a Federal district court and obtain an order for the production of agency records or information improperly withheld from him.

In such proceedings, the court would determine the matter de novo, and the burden would be upon the agency to sustain its action. Except for causes which the court deems of greater importance, proceedings authorized by this bill would be given priority in the court's docket.

Section 2 of this bill would repeal all laws and parts of laws inconsistent with it. This would not affect matters specifically exempt from disclosure by statute because they are expressly excepted from the new subsection (c) to be added to section 161. But it would thwart any attempt to emasculate this measure by engrafting on it limitations deduced from the general language of any other laws. It is intended particularly to avoid the distorted interpretations which have been placed on qualifying phrases in the disclosure provisions of section 3 of the Administrative Procedure Act.

We have submitted much too long to abuse of power by agencies in withholding information from the public. Continued acquiescence in this practice, or ineffectual protests against it, will seriously undermine the integrity of the democratic process. Each success enjoyed by an agency in extending the cloak of secrecy over its affairs encourages further restrictions on information made available to the people. Each success reduces the risk that corruption, bias or inefficiency will be detected, thus increasing the temptation to betray the public trust.

Because conditions of secrecy have been allowed to develop to an unhealthy degree, prompt and energetic measures are required to reverse this trend. Nothing less than a clear recognition of the public's interest in scrutinizing public records as a legal right, coupled with a judicial remedy to enforce that right, will suffice to accomplish this objective.

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